

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10

11 **UCC MANUFACTURING, a**
12 **California limited liability**
13 **company**

14 **Plaintiff,**

15 **vs.**

16
17 **RESEARCH & RESULTS**
18 **ENGINEERING, INC., a Utah**
19 **corporation; ROGER WATTERS,**
20 **an individual; and DOES 1 to 20,**
21 **inclusive.**

22 **Defendants.**
23

Case No.: 8:18-cv-00905 DOC (SSx)

24 **STIPULATED PROTECTIVE**
25 **ORDER**

26 **[Discovery Document: Referred to**
27 **Magistrate Judge Suzanne H. Segal]**
28

IT IS HEREBY STIPULATED by and between plaintiff UCC Manufacturing, LLC (“UCCM”) and defendants Research & Results Engineering, Inc. and Roger Watters (collectively, “Defendants”), the Parties to this action, through their respective counsel, that this Stipulated Protective Order be entered by the Court pursuant to Rules 26(c) and 29(b) of the Federal Rules of Civil Procedure to protect certain confidential information that may be produced during discovery and trial in this action. As between

1 the Parties to this Stipulation, they agree to be bound by its terms as of the time that the
2 Stipulation is executed by counsel.

3
4 **1. Good Cause Statement**

5
6 The Parties assert good cause exists for the issuance of the requested protective
7 order as the claims raised in this matter relate to the business and financial aspects of the
8 manufacturing business of Defendants and is necessary to protect the business and
9 financial privacy of Defendants and trade secrets of Defendants' customers from
10 disclosure through discovery or by subpoena. Pursuant to Federal Rule of Civil
11 Procedure 26(c)(1), the court may issue a protective order to "[a]ny party or any person
12 from whom discovery is sought" to prevent "annoyance, embarrassment, oppression, or
13 undue burden or expense." More specifically, the court may protect certain business-
14 related materials, including trade secrets and other commercially sensitive information
15 from disclosure. FRCP 26(c)(1)(G). A trade secret is "any information that can be used
16 in the operation of a business or other enterprise and is sufficiently valuable and secret
17 to afford an actual or potential economic advantage over others." Orthofix, Inc. v.
18 Hunter, 630 F. App'x 566, 567 (6th Cir. 2015) (quotation omitted).

19 In the present case, UCCM has issued a subpoena on Squatty Potty, LLC, which
20 is not a party to this case. UCCM seeks "contracts, agreements, invoices, payments,
21 purchase order(s), requests for proposals, and emails/communications . . . with or
22 relating to [Defendants]." The documents in Squatty Potty's possession which are
23 responsive to the subpoena contain the pricing information and negotiations between
24 Squatty Potty and one of its manufacturers, Defendant Research & Results Engineering,
25 Inc. ("R&R"). The unit cost for Squatty Potty's products that it has paid R&R are
26 protectable as trade secrets because those costs give Squatty Potty an economic
27 advantage over competitors. If Squatty Potty's manufacturing costs are not protected,
28 competitors will likely use that information to undercut Squatty Potty's retail prices,

1 which would thereby likely reduce Squatty Potty's place as a leader in the toilet stool
2 industry. Additionally, should other manufacturers gain knowledge of what Squatty
3 Potty is currently paying R&R, Squatty Potty's ability to effectively negotiate
4 prospective prices with those manufacturers would be significantly damaged. Squatty
5 Potty negotiates competitive manufacturing costs in order to provide consumers with
6 affordable goods manufactured in the United States. Further, Squatty Potty has always
7 treated this pricing information as a trade secret, requiring its manufacturing partners to
8 sign non-disclosure agreements regarding the same.

9 Based on the foregoing, there is good cause in this case for the Court to issue a
10 protective regarding Squatty Potty's manufacturing costs to maintain the same as a trade
11 secret.

12 **2. DEFINITIONS**

13 2.1 Action: The above-captioned pending federal lawsuit and consolidated
14 actions.

15 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how
18 it is generated, stored or maintained) or tangible things that qualify for protection under
19 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
20 Statement.

21 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
22 support staff).

23 2.5 Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

25 2.6 Disclosure or Discovery Material: all items or information, regardless of the
26 medium or manner in which it is generated, stored, or maintained (including, among
27 other things, testimony, transcripts, and tangible things), that are produced or generated
28 in disclosures or responses to discovery in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
3 expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside counsel.

6 2.9 Non-Party: any natural person, partnership, corporation, association, or
7 other legal entity not named as a Party to this action.

8 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
9 this Action but are retained to represent or advise a party to this Action and have appeared
10 in this Action on behalf of that party or are affiliated with a law firm which has appeared
11 on behalf of that party, and includes support staff.

12 2.11 Party: any party to this Action, including all of its officers, directors,
13 employees, consultants, retained experts, and Outside Counsel of Record (and their
14 support staffs).

15 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this Action.

17 2.13 Professional Vendors: persons or entities that provide litigation support
18 services (e.g., photocopying, videotaping, translating, preparing exhibits or
19 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
20 their employees and subcontractors.

21 2.14 Protected Material: any Disclosure or Discovery Material that is designated
22 as “CONFIDENTIAL.”

23 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
24 from a Producing Party.

25 **3. SCOPE**

26 The protections conferred by this Stipulation and Order cover not only Protected
27 Material (as defined above), but also (1) any information copied or extracted from
28 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected

1 Material; and (3) any testimony, conversations, or presentations by Parties or their
2 Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial shall be governed by the orders of the trial
4 judge. This Order does not govern the use of Protected Material at trial.

5 **4. DURATION**

6 Even after final disposition of this litigation, the confidentiality obligations
7 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
8 in writing or a court order otherwise directs. Final disposition shall be deemed to be the
9 later of (1) dismissal of all claims and defenses in this Action, with or without prejudice;
10 and (2) final judgment herein after the completion and exhaustion of all appeals,
11 rehearings, remands, trials, or reviews of this Action, including the time limits for filing
12 any motions or applications for extension of time pursuant to applicable law.

13 **5. DESIGNATING PROTECTED MATERIAL**

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
15 Party or Non-Party that designates information or items for protection under this Order
16 must take care to limit any such designation to specific material that qualifies under the
17 appropriate standards. The Designating Party must designate for protection only those
18 parts of material, documents, items, or oral or written communications that qualify so
19 that other portions of the material, documents, items, or communications for which
20 protection is not warranted are not swept unjustifiably within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that
22 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
23 to unnecessarily encumber the case development process or to impose unnecessary
24 expenses and burdens on other parties) may expose the Designating Party to sanctions.

25 If it comes to a Designating Party's attention that information or items that it
26 designated for protection do not qualify for protection, that Designating Party must
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.

28 ///

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
3 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
4 must be clearly so designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic documents,
7 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
8 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
9 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
10 portion or portions of the material on a page qualifies for protection, the Producing Party
11 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
12 in the margins).

13 A Party or Non-Party that makes original documents available for inspection need
14 not designate them for protection until after the inspecting Party has indicated which
15 documents it would like copied and produced. During the inspection and before the
16 designation, all of the material made available for inspection shall be deemed
17 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
18 copied and produced, the Producing Party must determine which documents, or portions
19 thereof, qualify for protection under this Order. Then, before producing the specified
20 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
21 that contains Protected Material. If only a portion or portions of the material on a page
22 qualifies for protection, the Producing Party also must clearly identify the protected
23 portion(s) (e.g., by making appropriate markings in the margins).

24 (b) for testimony given in depositions that the Designating Party identify the
25 Disclosure or Discovery Material on the record, before the close of the deposition all
26 protected testimony.

27 (c) for information produced in some form other than documentary and for any
28 other tangible items, that the Producing Party affix in a prominent place on the exterior

1 of the container or containers in which the information is stored the legend
2 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
3 the Producing Party, to the extent practicable, shall identify the protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
5 to designate qualified information or items does not, standing alone, waive the
6 Designating Party’s right to secure protection under this Order for such material. Upon
7 timely correction of a designation, the Receiving Party must make reasonable efforts to
8 assure that the material is treated in accordance with the provisions of this Order.

9 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
11 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
13 resolution process under Local Rule 37.1 et seq.

14 6.3 The burden of persuasion in any such challenge proceeding shall be on the
15 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
16 to harass or impose unnecessary expenses and burdens on other parties) may expose the
17 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
18 the confidentiality designation, all parties shall continue to afford the material in question
19 the level of protection to which it is entitled under the Producing Party’s designation
20 until the Court rules on the challenge.

21 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is
23 disclosed or produced by another Party or by a Non-Party in connection with this Action
24 only for prosecuting, defending, or attempting to settle this Action. Such Protected
25 Material may be disclosed only to the categories of persons and under the conditions
26 described in this Order. When the Action has been terminated, a Receiving Party must
27 comply with the provisions of section 13 below (FINAL DISPOSITION).

28 ///

1 Protected Material must be stored and maintained by a Receiving Party at a location and
2 in a secure manner that ensures that access is limited to the persons authorized under this
3 Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
5 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
6 may disclose any information or item designated “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
8 employees of said Outside Counsel of Record to whom it is reasonably necessary to
9 disclose the information for this Action;

10 (b) the officers, directors, and employees (including House Counsel) of the
11 Receiving Party to whom disclosure is reasonably necessary for this Action;

12 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
13 is reasonably necessary for this Action and who have signed the “Acknowledgment and
14 Agreement to Be Bound” (Exhibit A);

15 (d) the court and its personnel;

16 (e) court reporters and their staff;

17 (f) professional jury or trial consultants, mock jurors, and Professional
18 Vendors to whom disclosure is reasonably necessary for this Action and who have signed
19 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (g) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information;

22 (h) during their depositions, witnesses ,and attorneys for witnesses, in the
23 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
24 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not
25 be permitted to keep any confidential information unless they sign the
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
27 by the Designating Party or ordered by the court. Pages of transcribed deposition
28 testimony or exhibits to depositions that reveal Protected Material may be separately

1 bound by the court reporter and may not be disclosed to anyone except as permitted
2 under this Stipulated Protective Order; and

3 (i) any mediator or settlement officer, and their supporting personnel, mutually
4 agreed upon by any of the parties engaged in settlement discussions.

5 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
6 **PRODUCED IN OTHER LITIGATION**

7 If a Party is served with a subpoena or a court order issued in other litigation that
8 compels disclosure of any information or items designated in this Action as
9 “CONFIDENTIAL,” that Party must:

10 (a) promptly notify in writing the Designating Party. Such notification shall
11 include a copy of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena or order to
13 issue in the other litigation that some or all of the material covered by the subpoena or
14 order is subject to this Protective Order. Such notification shall include a copy of this
15 Stipulated Protective Order; and

16 (c) cooperate with respect to all reasonable procedures sought to be pursued by
17 the Designating Party whose Protected Material may be affected.

18 If the Designating Party timely seeks a protective order, the Party served with the
19 subpoena or court order shall not produce any information designated in this action as
20 “CONFIDENTIAL” before a determination by the court from which the subpoena or
21 order issued, unless the Party has obtained the Designating Party’s permission. The
22 Designating Party shall bear the burden and expense of seeking protection in that court
23 of its confidential material and nothing in these provisions should be construed as
24 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
25 from another court.

26 ///

27 ///

28 ///

1 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO**
2 **BE PRODUCED IN THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a Non-
4 Party in this Action and designated as "CONFIDENTIAL." Such information produced
5 by Non-Parties in connection with this litigation is protected by the remedies and relief
6 provided by this Order. Nothing in these provisions should be construed as prohibiting a
7 Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to produce
9 a Non-Party's confidential information in its possession, and the Party is subject to an
10 agreement with the Non-Party not to produce the Non-Party's confidential information,
11 then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-Party
13 that some or all of the information requested is subject to a confidentiality
14 agreement with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably
17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the Non-
19 Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court within 14
21 days of receiving the notice and accompanying information, the Receiving Party may
22 produce the Non-Party's confidential information responsive to the discovery request. If
23 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
24 information in its possession or control that is subject to the confidentiality agreement
25 with the Non-Party before a determination by the court. Absent a court order to the
26 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
27 court of its Protected Material.

28 ///

1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
5 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
6 all unauthorized copies of the Protected Material, (c) inform the person or persons to
7 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
8 such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
9 that is attached hereto as Exhibit A.

10 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
11 **OTHERWISE PROTECTED MATERIAL**

12 When a Producing Party gives notice to Receiving Parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection, the
14 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
15 26(b)(5)(B). This provision is not intended to modify whatever procedure may be
16 established in an e-discovery order that provides for production without prior privilege
17 review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach
18 an agreement on the effect of disclosure of a communication or information covered by
19 the attorney-client privilege or work product protection, the parties may incorporate their
20 agreement in the stipulated protective order submitted to the court.

21 **12. MISCELLANEOUS**

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the Court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order no Party waives any right it otherwise would have to object to
26 disclosing or producing any information or item on any ground not addressed in this
27 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground
28 to use in evidence of any of the material covered by this Protective Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
2 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
3 under seal pursuant to a court order authorizing the sealing of the specific Protected
4 Material at issue. If a Party's request to file Protected Material under seal is denied by
5 the court, then the Receiving Party may file the information in the public record unless
6 otherwise instructed by the court.

7 **13. FINAL DISPOSITION**

8 After the final disposition of this Action, as defined in paragraph 4, within 60 days
9 of a written request by the Designating Party, each Receiving Party must return all
10 Protected Material to the Producing Party or destroy such material. As used in this
11 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
12 summaries, and any other format reproducing or capturing any of the Protected Material.
13 Whether the Protected Material is returned or destroyed, the Receiving Party must
14 submit a written certification to the Producing Party (and, if not the same person or entity,
15 to the Designating Party) by the 60 day deadline that (1) identifies (by category, where
16 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
17 the Receiving Party has not retained any copies, abstracts, compilations, summaries or
18 any other format reproducing or capturing any of the Protected Material.
19 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
20 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
21 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
22 consultant and expert work product, even if such materials contain Protected Material.
23 Any such archival copies that contain or constitute Protected Material remain subject to
24 this Protective Order as set forth in Section 4 (DURATION).

25 ///

26 ///

27 ///

28 ///

1 14. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.

4 SO STIPULATED BY COUNSEL OF RECORD:

5 Date: _____

Date: _____

6 LAWRENCE M. CRON, ESQ., PC

BANGERTER FRAZIER &
7 GRAFF, PC

8
9
10 _____
11 Lawrence M. Cron, Esq.
12 Counsel for Plaintiff

William E. Frazier, Esq.
Daniel P. Wilde, Esq.
13 Counsel for Defendants

14 FOR GOOD CAUSE SHOWN, IT IS SO
15 ORDERED.

16 Date: September 12, 2019

17
18 /S/

19 _____
20 Hon. Suzanne H. Segal, Magistrate Judge
21 U.S. District Court, Central District of
22 California

EXHIBIT A

ACKNOWLEDGEMENT OF PROTECTIVE ORDER

I, _____, hereby acknowledge my understanding that Confidential Information is being provided to me pursuant to the terms and conditions of a Protective Order dated _____, in *UCC Manufacturing, LLC v. Research & Results Engineering, Inc., et al.*, Case No. 8:18-cv-00905 DOC (SSx) pending in the United States District Court for the Central District of California. My address is _____. My present occupation is _____.

I have been given a copy of that Protective Order and read it. I agree to be bound by the Protective Order. I will not reveal the Confidential Information to anyone except as allowed in the Protective Order. I will maintain all such Confidential Information – including copies, notes, or other transcriptions made therefrom – in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information - including copies, notes, or other transcriptions made therefrom – to the counsel who provided me with the Confidential Information. I hereby consent to the jurisdiction of the United States District Court, Central District of California for the purpose of enforcing the Protective Order.

Executed this _____ day of _____, 20____, at

_____.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.
